

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY OF ILLINOIS)	
)	
Petition for a Certificate of Public Convenience)	
and Necessity, pursuant to Section 8-406.1 of the)	
Illinois Public Utilities Act, and an Order pursuant)	Docket No. 12-0598
to Section 8-503 of the Public Utilities Act, to)	(on Rehearing)
Construct, Operate and Maintain a New High Voltage)	
Electric Service Line and Related Facilities in the)	
Counties of Adams, Brown, Cass, Champaign,)	
Christian, Clark, Coles, Edgar, Fulton, Macon,)	
Montgomery, Morgan, Moultrie, Pike, Sangamon,)	
Schuyler, Scott and Shelby, Illinois.)	

INITIAL BRIEF OF ERIC AND JULIA SPRAGUE

December 30, 2013

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Eric and Julia Sprague (the “Sprague’s”) submit their Initial Brief in accordance with the order of the Administrative Law Judges and Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”).

I. Introduction

A. Procedural History

On November 7, 2012, Ameren Transmission Company of Illinois (“ATXI”) filed with the Commission a petition (“Petition”) seeking a Certificate of Public Convenience and Necessity pursuant to Section 8-406.1 of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/1-101 et seq., authorizing ATXI to construct, operate, and maintain new 345 kV electric transmission lines running generally across Illinois from Missouri to Indiana. Pursuant to Section 8-406.1(i), ATXI also sought an order authorizing or directing the construction of the transmission lines pursuant to Section 8-503 of the Act. ATXI did not at the same time seek authority to condemn property under Section 8-509 of the Act.

By its Order dated August 20, 2013 (“Order”), the Commission found, among other things, as follows:

1. The route for the transmission line segment between the Mississippi River and Quincy; Quincy and Meredosia; Meredosia and Ipava; Meredosia and Pawnee; Mt. Zion and Kansas; Kansas and the Indiana state line; and Sidney and Rising should be approved along the routes identified in the prefatory portion of the Order;
2. The route for the transmission line segment between Pawnee and Pana and between Pana and Mt. Zion should not be approved in this proceeding;
3. The proposed new or expanded substations at Quincy, Meredosia, and Pawnee should be approved at the locations identified in the prefatory portion of the Order;
4. The proposed new or expanded substations at Ipava, Pana, Mt. Zion, Kansas, Sidney, and Rising should not be approved in this proceeding;
5. Pursuant to Section 8-406.1(i) of the Act, ATXI is authorized, pursuant to Section 8-503 of the Act, to construct the high voltage electric service line, the new and expanded substations and related facilities as approved by the Commission in the prefatory portion of the Order.

Based on the findings in the Order, the Commission issued a Certificate of Public Convenience and Necessity as follows:

IT IS HEREBY CERTIFIED that the public convenience and necessity require (1) construction, operation, and maintenance by Ameren Illinois Transmission Company of segments of a 345 kV electric transmission lines over the routes found appropriate at locations approved in Docket No. 12-0598, at locations as shown on the Appendix D attached hereto, as well as new substations at locations approved in Docket No. 12-0598, and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

The Commission further provided in its Order:

“IT IS FURTHER ORDERED that pursuant to Section 8-503 of the Act, ATXI is authorized to construct the high voltage electric service line, the new and expanded substations and related facilities as approved by the Commission in the prefatory portion of this Order.” ICC Docket No. 12-0598 (Order Aug. 20, 2013 at 133-34).

On September 19, 2013, ATXI filed an application for rehearing. Several other parties also filed applications for rehearing. In conference on October 2, 2013, the Commission granted the applications for rehearing of ATXI and certain other parties.¹ See Notice of Commission Action (Oct. 3, 2013). On October 29, 2013, the Administrative Law Judges (“ALJs”) set a schedule for rehearing, requiring direct testimony to be filed on November 13, rebuttal testimony by all parties to be filed on December 2, and surrebuttal testimony to be filed on December 10. Notice of Continuation of Hearing and notice of Schedule (Oct. 29, 2013). Evidentiary hearings on rehearing were held December 17-19, 2013.

B. Pawnee to Pana and Pana to Mt. Zion Segments, and Staff Alternative

As the Commission found in its Order, the route for the segment between Pawnee and Pana and between Pana and Mt. Zion was not approved. The ALJs, in furtherance of the Commission’s directive issued in its October 2 conference, directed the Commission Staff to “identify a transmission line route between Pawnee and Mt. Zion (via Kincaid) as soon as possible.” Notice of ALJ’s Ruling (Oct. 2, 2013). In response to this directive, the Commission Staff, on October 16, 2013, filed a notice in

¹ Coalition of Property Owners and Interested Parties in Piatt, Douglas and Moultrie Counties and Channon Family Trust; the Morgan, Sangamon, and Scott Counties Land Preservation Group; and Midcontinent Independent System Operator, Inc.

which it identified an alternative transmission line route from Pawnee to Mt. Zion through the Kincaid Substation. The Staff notice and maps accompanying the notice show that such alternative route would replace and obviate the Pawnee to Pana and Pana to Mt. Zion segments. See Notice and Identification of Alternative Route from Pawnee to Mt. Zion Through the Kincaid Substation Pursuant to Commission Direction Dated October 2, 2013, and Exhibit A thereto. In its direct testimony on rehearing, filed November 13, 2013, ATXI witnesses Kramer and Hackman explained why ATXI opposed the Staff-proposed alternative route and instead supported the Pawnee to Pana and Pana to Mt. Zion segments. ATXI Ex. 1.0 (RH) and 2.0 (RH).

C. Sprague Intervention and Position

The Sprague's filed their Petition for Leave to Intervene on November 25, 2013.² The Sprague's live on and own property lying along the ATXI primary route for the Pana to Mt. Zion segment. If the Commission adopts the Staff's recommended Pawnee to Mt. Zion (through Kincaid Substation) routing alternative, the Sprague's and their property will be unaffected. If, however, the Commission rejects Staff's recommendation routing alternative, and instead approves ATXI's proposals (i) to have its transmission line routed utilizing the Pawnee to Pana and Pana to Mt. Zion segments; and (ii) for the Pana to Mt. Zion segment, to utilize ATXI's primary route, then the Sprague's and their property will be affected, as Eric Sprague explained in his rebuttal testimony and exhibits. The Sprague's support the Pawnee to Mt. Zion routing alternative, as explained and advocated by the Commission Staff. If such routing alternative is not approved, and if the Commission instead approves ATXI's proposal to utilize the

² The Petition to Intervene was granted on December 9, 2013. Tr. (RH), at 82.

Pawnee to Pana and Pana to Mt. Zion segments, then the Sprague's object to a relatively small portion of the ATXI Pana to Mt. Zion segment, as described in more detail below. The bases for their objection is that ATXI has not met its legally required burden either to adequately describe said portion of the segment or to justify utilization of said portion of the segment. The Sprague's have proposed three different routing alternatives, each of which are preferable to ATXI's proposal under established routing criteria.

The remainder of this brief will be confined to issues pertaining to the Pana to Mt. Zion route as it impacts the Sprague's and their property.

II. Legal Standard

ATXI filed its Petition under Section 8-406.1 of the Act, which, if the applicant public utility so elects, provides an expedited procedure applicable to a certificate of public convenience and necessity for new high voltage electric service lines and related facilities. This section contains specific, detailed information that a public utility filing under the section must include with, and other steps the utility must take in connection with, its application. Section 8-406.1(f) also provides in relevant part:

(f) The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:

(1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.

(2) That the public utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction.

(3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Section 8-406.1(g) states:

(g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30th day after the filing of the application, the Commission finds that good cause exists to extend the 150-day period.

In addition, Section 8-406.1(i) requires that a decision granting a certificate under this section of the statute shall include an order pursuant to Section 8-503 of the Act:

(i) Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

Section 8-503 of the Act concerns, among other things, additions to or extensions of public utility facilities. This section provides, in part, as follows:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility . . . are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order; . . .

III. Project Connection Through Kincaid versus Pana

IV. Rehearing Routes

A. Meredosia-Pawnee

B. Location of Mt. Zion Substation

C. Pawnee – Mt. Zion

1. Pawnee – Mt. Zion via Kincaid

2. Pawnee – Mt. Zion via Pana

i. Pawnee – Pana (including Ramey/Raynolds Option)

ii. Pana – Mt. Zion

Evidence on Rehearing Pertaining to Sprague Property

Prior to adding facts and argument in the context of the twelve factors listed below, this brief will set forth the evidence pertaining to routing as it impacts the Sprague's and their property.

Eric Sprague filed rebuttal testimony and exhibits on December 2, 2013, in accordance with the procedural schedule. Sprague Exhibits 1.0, 1.1, 1.2, 1.3, 1.4, 1.5.³ The relevant portions of Mr. Sprague's uncontroverted testimony show the following.

The Sprague's own 32.5 acres of timber land along with an adjoining two acres on which their residence is located, at 2378 E. 1900 North Road, Moweaqua, IL. Their property lies along and abuts the west side of a county road (N. 2400 E Road, or 9th Road), and a Shelby Cooperative electric line runs along the road. A cemetery is located just over 300 feet from the eastern edge of the Sprague's property, and their residence is located to the west of the cemetery. The proposed route for the ATXI transmission line (ATXI primary route) would be located close and parallel to an existing 138kV transmission line running from Pana in a northerly direction. The Sprague's

³ No party had any cross-examination for Mr. Sprague or otherwise challenged his testimony, and his rebuttal testimony and exhibits, supported by affidavit, were admitted into the evidentiary record. Tr. (RH) at 206.

property lies to the West of the existing 138kV line. At a point that is East of the Sprague's property the proposed route shifts to the left and runs in a westerly direction for over 1,000 feet until it reaches 9th Road. At that point, the proposed route shifts to the right and runs North along 9th Road, passing by the Sprague's property, crossing an East-West road (1900 North Road) and continuing over 1,000 feet further to the North until it shifts to the right and runs in an easterly direction until it reaches the path of the 138kV line, where it shifts to the left and resumes its path alongside the 138kV line. This portion of the proposed route is shown on Sprague Exhibit 1.2 (p. 1), which also was ATXI Exhibit 4.2 (part 61 of 100) in the initial proceeding, and is reproduced as Exhibit A hereto.

As Mr. Sprague describes it, this portion of the route, where it departs from and then rejoins the path of the 138kV line, constitutes a "hitch" in the proposed route. Mr. Sprague testified that it isn't clear to him where ATXI proposes to locate the new line within the hitch area. It also became clear during the hearings held on rehearing that it similarly isn't clear to ATXI where within the hitch area the line would be located (see below). Despite lacking any detail about the line's proposed location, Mr. Sprague pointed out several deficiencies with the hitch portion of the proposed route. First, by veering from the straight line along the 138kV line, the hitch increases the length of the line, thereby increasing its cost. Secondly, the line within and along the hitch portion of the route would pass within 100 feet of one occupied residence (twice – once each on two sides), within 175 feet of a second occupied residence and within 225 feet of a third. Third, the line (assuming it would be located along the western side of 9th Road, would run 1,765 linear feet through the Sprague's timber, requiring clear-cutting of a good

portion of their timber. Mr. Sprague has registered the timber with the Illinois Department of Natural Resources and instituted a Forest Management Plan for the timber (consisting of Bur Oak, Northern Red Oak, Shingle Oak, Pin Oak, Black Walnut, Shagbark Hickory, Wild Black Cheery, American Elm, Osage Orange and Honey Locust). Fourth, given the presence of the Shelby Co-op line, ATXI likely would have to locate the new line further off and to the West of 9th Road, further into and more extensively intruding upon the Sprague's land. Fifth, the new line would pass within less than 300 feet (possibly significantly less) from the existing cemetery. As Mr. Sprague pointed out, ATXI's routing expert, Donell Murphy, placed residences, trees or wooded areas, and cemeteries within the high sensitivity category. See ATXI Ex. 4.4; ATXI Ex. 4.0 at lines 152, 404, 517 (initial proceeding). As Ms. Murphy testified in the initial proceeding, "Wooded areas emerged as a key sensitivity." ATXI Ex. 4.0, lines 402-03 (initial proceeding). ATXI's Siting Study stated, "Wooded areas were subsequently treated as a high sensitivity within the route siting analysis." ATXI Ex. 4.3, lines 152-53 (initial proceeding).

Mr. Sprague did more than merely point out deficiencies with ATXI's proposed route. He offered three routing alternatives. The first alternative is for ATXI to continue along the path of the existing 138kV line, and avoid the hitch altogether. The second (see Sprague Ex. 1.3) and third (see Sprague Ex. 1.4) alternatives each involve shortening the hitch to eliminate or lessen the negative impacts resulting from ATXI's proposed hitch route.

Mr. Sprague identified one residence which the first alternative would impact. The second alternative, which results in a smaller hitch and shorter length, and avoids the three residences impacted by ATXI's proposed route, the Sprague's timber, as well as the Shelby Co-op electric line and the cemetery. The third alternative results in an even smaller hitch and a shorter length, and avoids the three residences impacted by

ATXI's proposed route, the Sprague's timber, as well as the Shelby Co-op electric line and the cemetery.

It is evident that ATXI had not studied the hitch portion of the proposed, primary route of the Pana to Mt. Zion segment. There is no evidence that ATXI's routing study, or siting study, even identified, let alone considered, several important routing factors that make the hitch portion of the route as proposed by ATXI acceptable. Based on Ms. Murphy's testimony on rehearing, it became apparent that ATXI utilized the hitch solely to avoid the possible displacement of two homes Ms. Murphy believed would have been required by having the route for the new line continue along the existing 138kV line pathway. ALJ Yoder asked Ms. Murphy during cross-examination, "Just real quick, Ms. Murphy, with regard to that hitch in that route he just showed you, what was the reason for that little hump out there, if you recall?" Ms. Murphy answered by stating, "There is a home located on either side of the existing 138 line, and they're relatively close. So adding the new proposed 345 line on either side would require crossing that 138 line and displacement of those homes." Tr. (RH) p. 133, lines 7-17. Ms. Murphy's answer assumed a 150 foot right of way would be required through this portion of the route (Tr. (RH), p. 146, lines 12-18), so she did not consider the possibility that ATXI could utilize poles located more closely together, with shorter spans, for the short distance required to pass by the referenced homes and thereby require a narrower right of way. See ATXI Ex. 16.0, lines 153-156 (rebuttal testimony of ATXI witness Murbarger in initial proceeding). While such approach would increase the cost of the line, it would be offset by the significant savings resulting from avoiding the added length, at \$2 million per mile on average (Tr. (RH) p. 169, lines 21-23) and approximately \$360,000 for dead end

structures required for the hitch and its added turns (See Tr. (RH), p. 385, lines 2-25, p. 386, lines 1-19 (cross of Staff witness Rockrohr)). Ms. Murphy also testified that she did not consider a dual circuit, or co-locating the new line with the existing 138kV line. Tr. (RH), p. 149, lines 11-24, p. 150, line 1.

Ms. Murphy stated on cross-examination that she did not know how the new line would be configured along the pathway of the existing 138kV line, that she did not know which side of the 138kV line the new line would be constructed. Tr. (RH), p. 135, lines 20-24, p. 136, line 1. ATXI engineering witness Hackman similarly acknowledged that ATXI does not yet know where the new line would be located relative to the existing 138kV line, that the new line could be on either side of the existing line. Tr. (RH), p. 166, lines 20-24, p. 167, lines 1-9. Ms. Murphy exhibited a lack of knowledge of the details of the negative factors described hereinabove associated with the hitch portion of the route segment. She acknowledged that the Shelby Co-op electric line was not included in her routing study. Tr. (RH), p. 142, lines 9-11. Ms. Murphy did not know the new line would be constructed in relation to the existing Shelby Co-op line. Tr. (RH), p. 142, lines 18-22. And yet ATXI engineering witnesses testified as to the difficulties and disadvantages of parallel line construction. See, e.g., rebuttal testimony of ATXI witness Hackman in the initial proceeding, ATXI Ex. 12.0, lines 11-201.

It is significant that, in contrast to the substantial final routing flexibility the ATXI witnesses on rehearing described, in the initial proceeding, ATXI witness Murbarger described a much more restricted flexibility. He stated in his rebuttal testimony that, once the route is approved, "ATXI has some limited flexibility in determining where the physical structures of the poles are located. Structures can be moved up to five feet

from the centerline of the route....” ATXI Ex. 16.0, lines 68-77 (initial proceeding). We are left to wonder how ATXI can have the Commission approve a route with the required specificity when its witnesses do not themselves fail to propose the route with such specificity.

Sufficient detail in describing the hitch portion of the Pana to Mt. Zion route segment, as well as sufficient justification for that portion of the route, are lacking under applicable law. When seeking a Certificate of Public Convenience and Necessity under §406.1 of the Public Utilities Act, a Petitioner is also, necessarily, seeking an Order under §8-503. 220 ILCS 5/8-406.1(i). Any decision of the Commission must be supported by “substantial evidence based on the entire record.” *N. Moraine Wastewater Reclamation Dist. v. Ill. Commerce Comm’n & Rockwell Utils.*, 392 Ill. App. 3d 542, 556 (2d Dist. 2009); *Quality Saw & Seal v. Ill. Commerce Comm’n*, 374 Ill. App. 3d 776, 780 (2d Dist. 2007), *citing* 220 ILCS 5/10-201(e)(iv)(A). The burden of proof is on the Petitioner to put evidence in the Commission’s record to support its case. *See, e.g.* Order, Docket 96-0410, 1998 Ill. PUC LEXIS 341, 43 (May 6, 1998) (stating that ComEd had met its burdens under §§ 8-406 and 503 by placing certain evidence into the record). The Commission may not grant a certificate or order in this case that incorporates the ATXI proposed hitch portion of the route, because ATXI has failed to put forth sufficient evidence to support it.

The following factors will be used to compare the “hitch” portion of the Pana to Mt. Zion segment.

iii. Length of Line

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Longest	Shortest	Shorter than ATXI	Shorter than ATXI

iv. Difficulty and Cost of Construction

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Costliest and most difficult	Least costly (using shorter spans and narrower R-O-W for short distance to eliminate hitch)	Less costly than ATXI	Less costly than ATXI

v. Difficulty and Cost of Operation and Maintenance
(No known differences)

vi. Environmental Impacts
(No known differences)

vii. Impacts on Historical Resources
(No known differences)

viii. Social and Land Use Impacts

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Most Impacts – timber, cemetery; county road pathway negated by Shelby Co-op line	Least	Crosses vacant land and edge of portion of farmed ground	Crosses vacant land and edge of portion of farmed ground

ix. Number of Affected Landowners/Stakeholders

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Greatest number	Least	Fewer than ATXI proposed	Fewer than ATXI proposed

x. Proximity to Homes and Other Structures

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Most Impacts – close to 3 occupied residences	Least – displace 1 residence only if short spans and narrower R-O-W used; displace 1 non-residential structure	No residences or other structures affected	Routed along South side of 1900 North Road to minimize impact on 2 residences located to the North of the road

xi. Proximity to Existing and Planned Development
(No known differences)

xii. Community Acceptance

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Opposed by Sprague's	Least	Crosses vacant land and edge of portion of farmed ground	Crosses vacant land and edge of portion of farmed ground

xiii. Visual Impact

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Most visual impact - Routing along County Road and within proximity to 3 residences make it highly visible	Least – continues along existing 138kV line route	Next to least; crosses same East-West county road as ATXI proposed	Less visible than ATXI proposed; crosses same East-West county road as ATXI proposed; across road from two residences

xiv. Presence of Existing Corridors

ATXI proposed	Sprague Alt. 1	Sprague Alt. 2	Sprague Alt. 3
Routing North-South portion along 9 th Road negated by required placement of substantial distance from Shelby Co-op line	Highest – continues along existing 138kV line pathway	Least use of corridors	Portion along county Road (1900 North Road)

Additional Comments on Pana – Mt. Zion Segment

The Sprague's would find any of the 3 alternative route modifications along the hitch area of the Pana to Mt. Zion segment acceptable. The Sprague's therefore propose that the Commission either require further limited proceedings regarding this issue or, if it believes sufficient record evidence exists to select and approve one of the

3 alternative modifications to ATXI's primary route in the area of the hitch, then the Sprague's would have no objection to the Commission doing so.

D. Mt. Zion – Kansas

V. Certificate for Other Substations


A. Resolved

B. Contested

WHEREFORE, Eric and Julia Sprague respectfully request that the Commission decline to approve incorporation of ATXI's proposed hitch portion of the Pana to Mt. Zion route segment in this proceeding, and that it instead take one of the other actions with respect thereto as described hereinabove in the preceding full paragraph.

Dated: December 30, 2013

Respectfully submitted,

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